STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

Appeal From The Court Of Appeals
Hoekstra, P.J., and Murray and M.J. Kelly, JJ.

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PROGRESSIVE MARATHON INSURANCE COMPANY,

Plaintiff/Cross-Defendant/Appellee,

v

RYAN DEYOUNG and NICOLE L. DEYOUNG,

Defendants.

and

SPECTRUM HEALTH HOSPITALS and MARY FREE BED REHABILITATION HOSPITAL,

Intervenors/Cross-Plaintiffs/Appellants,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Intervenor/Cross-Defendant/Appellee.

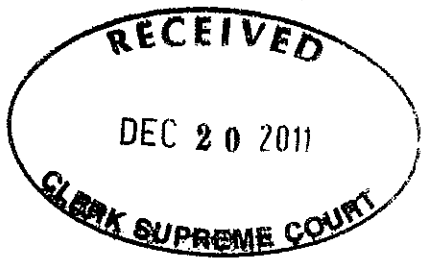
SUPREME COURT DKT NO. 143330

COA DKT NO. 296502

LC CASE NO. 09-01034-CZ

**BRIEF ON APPEAL OF APPELLEES, SPECTRUM HEALTH HOSPITALS AND MARY FREE BED REHABILITATION HOSPITAL**

**(ORAL ARGUMENT REQUESTED)**

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## STATEMENT OF THE BASIS OF JURISDICTION

The Michigan Supreme Court has jurisdiction over this appeal under MCR 7.301(A)(2) and 7.302(H)(3). The May 24, 2011, decision of the Court of Appeals, which granted Progressive's and Citizen's motions for summary disposition and denied Spectrum Health and Mary Free Bed's motion for summary disposition, is appealable by leave under MCR 7.301(A)(2). On June 30, 2011, Progressive filed a timely Application for Leave to Appeal to the Supreme Court. By Order dated September 21, 2011, this Court granted leave to appeal. Accordingly, this Court has jurisdiction under MCR 7.301(A)(2) and 7.302(H)(3).

## STATEMENT OF QUESTIONS INVOLVED

1. WHETHER AN IMMEDIATE FAMILY MEMBER WHO KNOWS THAT HE OR SHE HAS BEEN FORBIDDEN TO DRIVE A VEHICLE, AND HAS BEEN NAMED IN THE NO-FAULT INSURANCE POLICY APPLICABLE TO THE VEHICLE AS AN EXCLUDED DRIVER, BUT WHO NEVERTHELESS OPERATES THE VEHICLE AND SUSTAINS PERSONAL INJURY IN AN ACCIDENT WHILE DOING SO, COMES WITHIN THE "FAMILY JOYRIDING EXCEPTION" TO MCL 500.3113(A)?

   Trial court answered: No

   Court of Appeals answered: Yes

   Spectrum Health and Mary Free Bed answer: Yes

   Progressive answers: No

2. IF SO, WHETHER THE FAMILY JOYRIDING EXCEPTION SHOULD BE LIMITED OR OVERRULED?

   Trial court answered: Yes

   Court of Appeals suggested: Yes

   Spectrum Health and Mary Free Bed answer: No

   Progressive answers: Yes

3. WHETHER, IN THE EVENT THIS COURT CONCLUDES THAT THE FAMILY JOYRIDING EXCEPTION SHOULD BE OVERRULED OR LIMITED, THE RULING SHOULD BE APPLIED ONLY PROSPECTIVELY BEING THAT THE FAMILY JOYRIDING EXCEPTION HAS BEEN THE LAW OF THIS STATE FOR NEARLY TWO DECADES AND ONE UPON WHICH ITS CITIZENS HAVE REASONABLY RELIED?

   Trial court did not answer.

   Court of Appeals did not answer.

   Spectrum Health and Mary Free Bed answer: Yes

## INTRODUCTION

Since 1992, Michigan jurisprudence has recognized an exception to the unlawful taking exclusion to personal protection insurance ("PIP") coverage under MCL 500.3113(a) for family members who are merely joyriding in a family vehicle, with no intent to steal the vehicle. With this appeal, Progressive asks this Court to either overrule the family joyriding exception altogether or to create an exception to the exception for family members who are excluded from liability coverage under the no-fault policy through which the benefits are otherwise required to be paid. For the reasons set forth below, this Court should decline both invitations.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

### I. THE ACCIDENT AND UNDISPUTED MEDICAL CHARGES

On September 17, 2008, Ryan DeYoung was driving his wife's 2001 Oldsmobile Bravada when he was involved in a serious motor vehicle accident.[1] Nicole Lee DeYoung, Mr. DeYoung's wife, insured the vehicle, along with three others she owned, through Progressive.[2] As a result of the injuries Mr. DeYoung sustained in the accident, he incurred $232,773.61 in medical charges at Spectrum Health and $53,858.05 in medical charges at Mary Free Bed.[3]

### II. PROGRESSIVE DENIES CLAIMS UNDER "EXCLUDED DRIVER" PROVISION OF THE POLICY AND CITIZENS DENIES CLAIMS ON THE BASIS OF PRIORITY

Because Mr. DeYoung resided with his wife at the time of the accident, and did not carry no-fault insurance coverage of his own, Spectrum Health and Mary Free Bed billed

[1] Trial Court Opinion and Order, Appellant's Appendix, p. 58a-59a.
[2] Trial Court Opinion and Order, Appellant's Appendix, p. 59a.
[3] Affidavit of No-Fault Charges – Spectrum, Appellant's Appendix p.4a; Affidavit of No-Fault Charges –Mary Free Bed, Appellant's Appendix, p. 7a.

their medical charges to Progressive. Progressive denied the claims on the basis that Mr. DeYoung was an "excluded driver" under Ms. DeYoung's insurance policy.[4]

Following Progressive's denial of the claims, the claims were submitted to the Michigan Assigned Claims Facility ("ACF"). The ACF assigned the claims to Citizens, but Citizens denied the claims, contending that higher priority identifiable coverage, through Progressive, was available to pay the claims.[5]

## III. PROGRESSIVE FILES DECLARATORY JUDGMENT ACTION SEEKING TO AVOID PAYMENT OF BENEFITS

On January 26, 2009, Progressive filed a declaratory judgment action against Mr. and Ms. DeYoung, seeking to avoid coverage for Mr. DeYoung's PIP benefits under the "excluded driver" provision in its policy. Spectrum Health and Mary Free Bed intervened and brought claims against Progressive and Citizens for payment of Mr. DeYoung's medical charges.[6]

## IV. PROCEEDINGS IN THE TRIAL COURT AND THE TRIAL COURT'S RULING

Following discovery, which confirmed that at the time of the accident, Mr. DeYoung was using his wife's car without her permission, was intoxicated, and did not have a driver's license, the parties filed cross-motions for summary disposition. The trial court granted Progressive's and Citizen's motions and denied Spectrum Health and Mary Free Bed's motion.[7] The trial court first held that Mr. DeYoung was not excluded from recovering PIP benefits under the express terms of his wife's policy. Having concluded that the contract itself does not preclude Mr. DeYoung from receiving PIP benefits, and noting that if Mr. DeYoung is statutorily excluded from receiving PIP benefits from Progressive, he would also be statutorily

[4] Trial Court Opinion and Order, Appellant's Appendix, p. 59a.
[5] Trial Court Opinion and Order, Appellant's Appendix, p. 59a.
[6] Trial Court Opinion and Order, Appellant's Appendix, p. 59a.
[7] Trial Court Opinion and Order, Appellant's Appendix, p. 65a.

excluded from receiving PIP benefits from Citizens, the trial court granted summary disposition in favor of Citizens on Spectrum Health and Mary Free Bed's claims against it.[8] Next, the trial court concluded that Mr. DeYoung, who had taken his wife's car without her permission, had done so unlawfully and without a reasonable belief that he was entitled to take the car.[9] Thus, according to the trial court, Mr. DeYoung would be statutorily excluded from recovering benefits under MCL 500.3113(a), the unlawful taking exclusion, unless the family joyriding exception applied. After reviewing the history of the family joyriding exception, and noting that no case had applied it to a driver who had been expressly excluded from coverage in the insurance policy, the trial court concluded that the exception did not apply to Mr. DeYoung – in essence, creating an "exception to the exception."[10]

## V. THE COURT OF APPEALS' DECISION

Spectrum Health and Mary Free Bed timely appealed the trial court's decision in the Court of Appeals. On May 24, 2011, the Court of Appeals issued an unpublished per curiam opinion reversing the trial court, finding that the family joyriding exception did apply to Mr. DeYoung and that he was, therefore, entitled to PIP benefits under the law and through Ms. DeYoung's Progressive policy.[11]

## VI. THE SUPREME COURT GRANTS LEAVE TO APPEAL

On June 30, 2011, Progressive filed an application for leave to appeal to this Court. This Court granted the application and directed the parties to address "(1) whether an immediate family member who knows that he or she has been forbidden to drive a vehicle, and has been named in the no-fault insurance policy applicable to the vehicle as an excluded driver,

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[8] Trial Court Opinion and Order, Appellant's Appendix, p. 60a-61a.
[9] Trial Court Opinion and Order, Appellant's Appendix, p. 62a.
[10] Trial Court Opinion and Order, Appellant's Appendix, p. 62a-65a.
[11] Court of Appeals Unpublished Opinion, Appellant's Appendix, p. 66a-69a.

but who nevertheless operates the vehicle and sustains personal injury in an accident while doing so, comes within the so-called 'family joyriding exception' to MCL 500.3113(a); and (2) if so, whether the 'family joyriding exception' should be overruled or limited."[12]

## SUMMARY OF ARGUMENT

Although PIP benefits are generally mandated under the no-fault act when a person is injured in a motor vehicle accident and regardless of fault, there are a few statutory exceptions to this rule, including where the person unlawfully took the vehicle and did so without a reasonable belief that he or she was entitled to take and use the vehicle. Since 1992, however, this state's appellate courts have recognized an exception to the unlawful taking exclusion for family members who are merely joyriding, with no intent to steal the vehicle. In the nearly two decades since the family joyriding exception was first recognized, our Legislature has never indicated that the exception is inconsistent with the intent behind the unlawful taking exclusion. This long-standing interpretation of the no-fault act should not be overruled or limited; it is a workable, bright-line rule as it exists now and one upon which the people of this state have long relied. If, however, this Court determines that despite its nearly 20-year existence, the family joyriding exception should now be de-recognized or limited, it should do so only prospectively. The rule has long been binding on every court of this state, save this one, and those who have relied upon this status should not be punished for doing so. If this Court determines that it must overrule or limit the family joyriding exception so as to effectuate the legislative intent behind the unlawful taking exclusion, prospective application is warranted.

[12] Supreme Court Order Granting Leave to Appeal, Appellant's Appendix, p. 71a.

## ARGUMENT

### I. STANDARD OF REVIEW

This Court reviews *de novo* a decision to grant or deny summary disposition.[13] The proper construction and interpretation of statutory language is a question of law, which this also Court reviews *de novo*.[14]

### II. ANALYSIS

#### A. MCL 500.3113(a) and the Family Joyriding Exception

Michigan's No-Fault Insurance Act[15] provides that a person who suffers "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" is eligible for PIP benefits, without regard to fault,[16] unless one of four statutory exclusions applies: (1) the injury was intentional;[17] (2) the claimant is the owner of the vehicle involved in the accident and the vehicle was uninsured;[18] (3) the claimant is not a resident of this state and was operating a vehicle not registered in this state and was not insured by an insurance company that has filed a certificate of coverage in this state;[19] and (4) the claimant was operating a motor vehicle that he or she had taken unlawfully and did not have a reasonable belief that he or she was entitled to take and use the vehicle.[20] It is the last of these four statutory exclusions at issue here, commonly known as the "unlawful taking exclusion."

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[13] *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002).
[14] *Id.*
[15] MCL 500.3101 *et seq.*
[16] MCL 500.3105.
[17] MCL 500.3105(4).
[18] MCL 500.3113(b).
[19] MCL 500.3113(c).
[20] MCL 500.3113(a).

In 1992, two decades ago, this Court was asked to interpret the scope of the unlawful taking exclusion in *Priesman v Meridian Mutual Ins Co*,[21] and, specifically, whether it applied to a fourteen-year-old boy, who took his mother's car without her permission, during the night, while she was sleeping.[22] A majority of the members of this Court at that time agreed with the Court of Appeals that it did not, but only a plurality agreed on the reasoning.[23] Justice Levin, who wrote the lead opinion, and those who joined him, assessed the scope of the exclusion keeping in mind the broad nature of coverage under the no-fault act, explaining as follows:

> All persons,
>
> —those who own vehicles and those who do not;
>
> —those who insure a vehicle they own, and those who do not insure a vehicle that they own, unless a person who does not insure is injured while driving *that* uninsured vehicle;
>
> —the spouse and a relative domiciled in the same household of an owner of a vehicle without regard to whether the owner has insured the vehicle;
>
> —passengers, pedestrians, sidewalk gawkers, persons walking, sitting, or lying down in a parking lot or a field, and also those who become involved in a vehicular accident while in a structure
>
> are entitled to recover full medical benefits without regard to fault and without regard to whether they or a family member has paid for no-fault coverage, under Michigan's most comprehensive no-fault act.
>
> It is in that context—full medical benefits, unlimited in amount for every person, including even a person who does not insure a vehicle he owns (except when driving *that* vehicle) and the spouse and relatives domiciled in the household of the owner of an uninsured vehicle *even when driving or riding as a passenger in that uninsured vehicle* —that we assess the correctness of Meridian's contention that the Legislature did not intend that Corey recover medical benefits because, when he was fourteen

[21] 441 Mich 60; 490 NW2d 314 (1992).
[22] *Id.* at 61-62.
[23] Justice Boyle concurred in result only.

> years old, he took his mother's *insured* vehicle in the middle of the night, while she was sleeping, without her permission.[24]

Given that the Legislature had drafted the no-fault act such that "countless persons would be entitled . . . to no fault benefits without regard to whether they are obliged to purchase no-fault insurance or, if obliged to insure, do in fact do so," the plurality reasoned, our Legislature did not intend the unlawful taking exclusion to apply to joyriding family members who have no intention to steal the vehicle.[25] In so doing, the plurality noted: "Legislators generally are also parents and sometimes grandparents. Some may have had experience with children, grandchildren, nephews, nieces, and children of friends who have used a family vehicle without permission. Some may have themselves driven a family vehicle without permission."[26] As such, the plurality concluded, the legislative intent behind the unlawful taking exclusion was not to exclude family members joyriding in family vehicles.

Five years later, in *Butterworth Hospital v Farm Bureau Ins Co*, [27] the Court of Appeals was asked to determine whether an adult who resided outside of, but near, his parents' home, had a seizure disorder such that he had no drivers license, and was injured while driving his mother's uninsured car without her permission, was barred from recovering PIP benefits under the unlawful taking exclusion.[28] The court noted that the phrase "unlawful taking" is not defined in the act itself, but that the *Priesman* plurality had found that it did not apply to joyriding family members.[29] Adopting the rationale of the lead opinion in *Priesman*, the Court of Appeals held that "§ 3113(a), which excludes coverage for an individual who unlawfully takes a vehicle, does not apply to cases where the person taking the vehicle unlawfully is a family

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[24] *Id.* at 65-66.
[25] *Id.* at 68.
[26] *Id.*
[27] 225 Mich App 244; 570 NW2d 304 (1997).
[28] *Id.* at 246, 250.
[29] *Id.* at 247-48.

member doing so without the intent to steal but, instead, doing so for joyriding purposes."[30] The court rejected the insurance company's attempt to distinguish *Priesman* on the grounds that this driver was physically incapable of operating the vehicle safely, not entitled to be a licensed driver, and knew that the vehicle was uninsured, explaining that such issues go to the use of the vehicle, not the taking, but "it is the unlawful nature of the taking, not the unlawful nature of the use, that is the basis of the exclusion under § 3113(a)."[31]

Two years later, in *Mester v State Farm Mutual Ins Co*, [32] the Court of Appeals declined to extend the family joyriding exception to cover non-family members. In that case, a twelve-year-old girl skipping school with friends took a stranger's vehicle and crashed during the ensuing police chase.[33] Although recognizing that the minors were only joyriding, and had no intent to steal the vehicle, the court nonetheless declined to apply the family joyriding exception to non-family members because of the absence of those "special considerations" attendant to a family member's use of a relative's vehicle.[34]

In 2005, the Court of Appeals decided *Allen v State Farm Mutual Automobile Ins Co*, [35] in which the court again declined to extend the family joyriding exception to a non-family member. Ben Strother, who did not have a license, was injured while driving a vehicle owned by Heidi Allen, with whom he lived but was not related and who had not given him permission to drive the vehicle.[36] The court acknowledged that Strother had no intent to steal the vehicle and,

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[30] *Id.* at 248-29.
[31] *Id.* at 250 (citing *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 627; 499 NW2d 423 (1993) and *State Farm Mut Auto Ins Co v Hawkeye-Security Ins Co.*, 115 Mich App 675, 682; 321 NW2d 769 (1982)).
[32] 235 Mich App 84; 596 NW2d 205 (1999).
[33] *Id.* at 85-86.
[34] *Id.* at 88.
[35] 268 Mich App 342; 708 NW2d 131 (2005).
[36] *Id.* at 343-44.

thus, was merely joyriding, but because Strother and Allen were neither legally nor biologically related, the family joyriding exception did not apply.[37] Thus, Strother was precluded from recovering PIP benefits.

Most recently, in *Roberts v Titan Ins Co (On Reconsideration)*,[38] the Court of Appeals recognized the binding precedent of *Butterworth*, and applied the family joyriding exception to require the payment of no-fault benefits for an intoxicated 12-year-old son of the statutory owner of a vehicle who took the vehicle without permission, but without the intent to steal the vehicle.[39] The insurance company in that case urged the Court of Appeals to ignore the *Priesman* decision on the basis that "in recent years the Michigan Supreme Court has more strictly enforced the dictate that '[s]tatutory-or contractual-language must be enforced according to its plain meaning" and that the "current membership" of this Court "would likely conclude that the justices signing the lead opinion in *Priesman* improperly sought to legislate from the bench and judicially create a joyriding exception when the plain language of MCL 500.3113(a) shows no such intent."[40] The panel rejected this argument, explaining "we cannot render decisions based on speculation regarding what the current membership of the Supreme Court may decide."[41] Although the panel indicated its disagreement with the lead opinion *Priesman* and that it would not have followed *Butterworth* if not compelled to do so under MCR 7.215(J)(1), it recognized the existence of the family joyriding exception and applied it so as to require the payment of benefits.

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[37] *Id.* at 346.
[38] 282 Mich App 339; 764 NW2d 304 (2009).
[39] *Id.* at 353-57.
[40] *Id.* at 353.
[41] *Id.*

The judges of the Court of Appeals were polled under MCR 7.215(J) and an order was entered on December 18, 2008, directing that a special conflict panel would not be convened to resolve the disagreement between the panel in *Roberts* and the panel in *Butterworth*.[42] And on October 30, 2009, this Court, in a 4-3 vote, denied the insurance company's application for leave to appeal in *Roberts*.[43] Consequently, *Priesman*, *Roberts*, and *Butterworth* indisputably represent the law of this state and have since this court decided *Priesman* in 1992, 20 years ago. The trial court was not free to disregard these decisions even if it disagreed with them. The Court of Appeals recognized this.

### B. Because Mr. DeYoung was Driving a Family Member's Vehicle at the Time of the Accident and Had no Intent to Steal the Vehicle, the Family Joyriding Exception Applies

In granting leave to appeal, this Court asked the parties to address whether the family joyriding exception to § 3113(a) applies to an immediate family member who knows that he or she has been forbidden to drive a vehicle and has been named as an excluded driver in the no-fault insurance policy applicable to the vehicle. Under the law of this state, as it has been interpreted by its appellate courts for the past 20 years, it does.

Appellant contends that in refusing to recognize the major factual distinctions between this case and *Priesman* – i.e., that Mr. DeYoung is an adult; that he did not have a driver's license; that he was intoxicated at the time of the accident; and that he was a named excluded driver on his wife's insurance policy – the Court of Appeals "expanded" the family joy riding exception beyond the *Priesman* plurality's intention and that the policy concerns that gave rise to the family joyriding exception are not present in this case.

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[42] *See id.* at 342.
[43] *Roberts ex rel. Irwin v Titan Ins Co*, 485 Mich 935; 773 NW2d 905 (2009).

The Court of Appeals did not expand the family joyriding exception at all. On the contrary, it did precisely what it was required to do: follow precedent. The exception applies "where the person taking the vehicle unlawfully is a family member doing so without the intent to steal but, instead, doing so for joyriding purposes."[44] The only legally significant factual issues in determining whether the family joyriding exception applies, therefore, are (1) whether the claimant had taken a family member's vehicle and (2) whether the claimant intended to steal the vehicle.

The fact that Mr. DeYoung is an adult had no impact on the lower courts' analyses in this case because it is legally insignificant under *Butterworth*.[45] The insurance company in that case made the same argument and the Court of Appeals rejected it, explaining that "the holding in *Priesman* was not based upon the fact that the driver in *Priesman* was a minor and domiciled with his parents; rather it was based upon the fact that the driver was a family member who merely intended to joyride."[46] As it was required to do, the Court of Appeals followed precedent.

That Mr. DeYoung had no driver's license and was intoxicated at the time of the accident are also factual distinctions without legal significance under *Butterworth*, in which the claimant had no license,[47] and *Roberts*, in which the claimant was intoxicated.[48] Moreover, both of those facts go to whether Mr. DeYoung was lawfully *using* the vehicle at the time of the accident, not whether he unlawfully *took* the vehicle. As the Court of Appeals has explained on

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[44] *Butterworth, supra* at 249.
[45] *Id.* at 250-51.
[46] *Id.; see also Mester, supra* at 88 (explaining that the justices who recognized the family joyriding exception in *Priesman* did so "because of the special considerations attendant to the joyriding use of a *family* vehicle by a *family* member") (emphasis added).
[47] *Butterworth, supra* at 250.
[48] *Roberts, supra* at 357.

numerous occasions, however, "it is the unlawful nature of the taking, not the unlawful nature of the use, that is the basis of the exclusion under § 3113(a)."[49] As it was required to do, the Court of Appeals followed precedent.

For Appellant, as it was for the trial court, the most significant factual distinction is that Mr. DeYoung was a named excluded driver on Ms. DeYoung's insurance policy. Yet, this too is a factual distinction without legal significance. PIP benefits are statutorily mandated[50] and, although the no-fault act permits an insurer to expressly exclude a person from *liability* coverage,[51] it does not do so for PIP coverage.

Second, if it can be considered relevant at all, the fact that a person is a named excluded driver goes to the nature of his *use* of the vehicle, not to the nature of the *taking*. That is, Mr. DeYoung's knowledge that he was an excluded driver is no different than the claimant's knowledge in *Butterworth* that the vehicle was uninsured, which the Court of Appeals found did not take him out of the family joyriding exception. Indeed, consider, for example, if Ms. DeYoung *had* given Mr. DeYoung permission to drive her vehicle. Would the fact that he was a named excluded driver somehow render his permissive use of the vehicle an "unlawful taking"? It would not. Because it was with permission of the owner, and not a taking at all, it would not

[49] *See Butterworth*, *supra* at 250 and cases cited therein.
[50] MCL 500.3105 and 3114; *see also* Appellant's Brief on Appeal at 23.
[51] MCL 500.3009

violate the relevant criminal statutes,[52] and, even if a breach of contract were "unlawful," which it is not, Mr. DeYoung was not a party to the contract of insurance, only his wife was.[53] Simply put, that Mr. DeYoung was a named excluded driver has no bearing on whether his taking was "unlawful" for purposes of § 3113(a). The Court of Appeals did not err in failing to create an exception to the family joyriding exception for named excluded drivers.

Finally, the policy concerns that gave rise to the family joyriding exception are no less significant simply because the driver is an adult or excluded under the no-fault policy applicable to the vehicle. As the *Priesman* plurality and the Court of Appeals in *Butterworth*

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[52] *See* MCL 750.413 and 750.414. For example, in his concurrence to this Court's order denying leave to appeal in *Farmers Ins Exchange v Young*, 489 Mich 909, 909; 796 NW2d 740 (2011), Justice Markman recently explained as follows:

> MCL 500.3113(a) provides an exclusion for PIP benefits in circumstances in which "[t]he person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle." Based on this language, . . . the first level of inquiry will always be whether the taking of the vehicle was unlawful. If the taking was lawful, the inquiry ends because § 3113(a) does not apply." 282 Mich.App. at 425, 766 N.W.2d 878. "An unlawful taking does not require an intent to permanently deprive the owner of the vehicle to constitute an offense." *Mester v. State Farm Mut. Ins. Co.*, 235 Mich.App. 84, 88, 596 N.W.2d 205 (1999). Rather, an unlawful taking may occur where a person has taken a vehicle "without authority." MCL 750.413; MCL 750.414. However, *Plumb* did not expressly identify whose authority must be lacking for the purposes of § 3113(a). To the extent that it is necessary to do so, I would clarify that, at least in my judgment, this provision is focused on the authority of the owner of the vehicle, not the state of Michigan. That is, for the purposes of § 3113(a), a vehicle may be "unlawfully taken" where it is taken without the authority of its owner, not where a person has taken the vehicle without a valid driver's license, the requisite insurance, or in violation of some other provision of the Motor Vehicle Code.

[53] The trial court recognized this much, stating "even if a person could contract away his or her statutory rights, Ryan did not. He is not a party to the contract of insurance, only his wife is." Trial Court Opinion and Order, Appellant's Appendix, p. 61a.

recognized, family members take family vehicles without permission all of the time. And not only is it a common occurrence, but it is one for which neither the owner nor the family member doing the taking would expect to face criminal charges, at least where the family member is merely joyriding, with no intent to steal the vehicle.

In short, as it was bound to do, the Court of Appeals followed precedent. Under *Priesman*, *Butterworth*, and their progeny, the family joyriding exception has been the law of this state for 20 years: a family member joyriding in a family vehicle does not constitute an unlawful taking. Appellant does not dispute that Mr. DeYoung was driving a family member's vehicle at the time of the accident or that he had no intent to steal the vehicle. Thus, the family joyriding exception applies.

## III. THE FAMILY JOYRIDING EXCEPTION, WHICH HAS BEEN THE LAW OF THIS STATE FOR TWO DECADES, SHOULD NOT BE OVERRULED OR LIMITED

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature.[54] In so doing, this Court must consider not only the plain language of the specific statutory provision at issue, but that plain language in light of the act as a whole.[55] The lead opinion in *Priesman* did just that. The no-fault act is undeniably comprehensive in nature. It entitles people to PIP benefits who have never purchased insurance at all, and, even more, although it would exclude the owner if driving his or her uninsured vehicle, it would not exclude that owners family members.[56] Construing § 3113(a) in light of this comprehensive

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[54] *Rowland v Washtenaw Cnty Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007).
[55] *See, e.g.*, *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011); *People v Feezel*, 486 Mich 184, 205; 783 NW2d 67 (2010); *Gusler v Fairview Tubular Prods*, 412 Mich 270, 291; 315 NW2d 388 (1981).
[56] MCL 500.3113(b). Indeed, this provision itself supports that the Legislature was aware of the commonality of family members driving family vehicles.

nature, the *Priesman* plurality concluded that the Legislature did not intend to exclude family members joyriding in family vehicles.

In the 20 years since *Priesman* was decided, and through all the appellate decisions enforcing the exception thereafter, our Legislature has not acted to say that the Court got it wrong. Although this Court has questioned the reliability of legislative acquiescence as a tool of statutory construction,[57] the rule has a long history in this state[58] and the United States Supreme Court has recently reaffirmed its use.[59] It is well-settled that the Legislature is presumed to be aware of judicial interpretations of existing laws.[60] Where, as here, a statutory interpretation has been in place for 20 years with no action from the Legislature, it is more than reasonable to conclude that the Court's interpretation did not thwart the Legislature's intent.[61] As it is, the Legislature is currently considering major changes to the no-fault act and, yet, the proposed bill makes no change to the language of § 3113(a) that would indicate that the *Priesman* plurality incorrectly interpreted the legislative intent behind the unlawful taking exclusion.[62]

As a plurality opinion, Spectrum Health and Mary Free Bed recognize that *Priesman* is not an authoritative interpretation binding on this Court under the doctrine of stare

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[57] *See e.g.*, *Donajkowski v Alpena Power Co*, 460 Mich 243, 261; 596 NW2d 574 (1999).
[58] See cases cited in *Rowland, supra* at 260-61 (Kelly, J. Dissenting).
[59] *See id.* at 260 (quoting *Shepard v United States*, 544 US 13, 23; 125 S Ct 1254 (2005)).
[60] *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 439-440; 716 NW2d 247 (2006).
[61] To illustrate the point, in *Karaczewski v. Farbman Stein & Co*, this Court overturned a long-standing judicial interpretation of Michigan's Workers' Disability Compensation Act, finding the interpretation to be contrary to the plain language of the statute. 478 Mich 28; 732 NW2d 56 (2007). The Legislature reacted almost immediately abrogating the *Karacewski* decision with 2008 PA 499, thereby demonstrating that even where this Court has failed to construe a statute *exactly* as written, if the Legislature leaves the interpretation intact for years and years, there is no reason to assume that the Court's interpretation was wrong or thwarted the Legislature's intent.
[62] *See* HB 4936.

decisis.[63] Yet, at the same time, it cannot be questioned that, since *Butterworth* was decided, the family joyriding exception has been binding on every other court of this state.[64] Abiding by decided cases "promotes the evenhanded, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."[65]

In *Robinson v City of Detroit*,[66] this Court set forth the analysis to be applied in deciding whether to overrule established precedent.[67] The Court first considers whether the previous decision was wrongly decided.[68] Even where the Court concludes that it was, it still applies a three-part test to determine whether the decision should nonetheless be adhered to: "(1) whether the decision defies practical workability, (2) whether reliance interests would work an undue hardship if the decision were overturned, and (3) whether changes in the law or facts no longer justify the decision."[69] Under this analysis, even if the Court concludes that the family joyriding exception is inconsistent with the plain language of § 3113(a), and, therefore, *Priesman* and its progeny were wrongly decided, the decision still should not be overturned.

First, the family joyriding exception in no way defies practical workability.[70] As the previous discussion of the case law applying the rule makes clear, the analysis is simple, clear, and predictable. Where a family member takes a family vehicle with no intent to steal, but

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[63] *Negri v Slotkin*, 397 Mich 105, 109; 244 NW2d 98 (1976).
[64] MCR 7.215(C)(2) and (J)(1).
[65] *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000).
[66] *Id.*
[67] *See Feezel*, *supra* at 212-13.
[68] *Id.*
[69] *Id.*
[70] In its reply brief in support of on its application for leave to appeal, Appellant asserts that Spectrum and Mary Free Bed failed to offer to any reason why overruling *Priesman* and its progeny would defy practical workability. The question, however, is whether the prior decision itself defies practical workability, not whether overruling it would defy practical workability.

merely for joyriding purposes, it is not an unlawful taking, period. The only questions that need to be answered are (1) whether the claimant had taken a family member's vehicle and (2) whether the claimant intended to steal the vehicle. The line could not be clearer.

Second, the family joyriding exception has been the law of this state, as interpreted by its appellate courts, for 20 years. Once *Priesman* was decided, and certainly after *Butterworth* adopted its reasoning, every insurer in this state understood that family members who take a family vehicle with no intent to steal, but merely for joyriding purposes, are not excluded from PIP benefits under § 3113(a). Insurance companies have set their premiums with full knowledge of this risk. Overruling *Priesman* would, therefore, upset a risk balance that has been in place for two decades, with insurance carriers setting *and collecting* premiums based upon this settled rule of no-fault law. Appellant's forewarning that failure to overrule the family joyriding exception will cause premiums to rise and perhaps even result in complete uninsurability for those with reckless or irresponsible family members is not based in reality. The family joyriding exception has been the law of this state for 20 years and has had no such effect. On the contrary, overruling the family joyriding exception now would effectively result in a windfall to insurance companies, which have been setting premiums with full knowledge of the rule's existence for the past two decades. It may very well be that Mr. DeYoung did not personally rely on *Priesman* and *Butterworth* when he decided to take his wife's car without her permission or that either of the DeYoung's were even aware of their existence. But Ms. DeYoung did pay her premiums and did so at the rate set by Appellant, to whom *Priesman* and its progeny surely did not go unnoticed.

Finally, there have been no changes in the law or facts to justify overruling the *Priesman* decision. Indeed, it was just two years ago that this very Court denied leave to appeal

in *Roberts*, thereby effectively announcing to the citizens of Michigan that the family joyriding exception is alive and well.[71] Because the family joyriding exception has been the law of this State for nearly two decades with no indication from our Legislature that the Court got it wrong and because it is a workable, bright-line rule that has been relied upon by insurance companies in setting premiums and by the customers who have paid them, the Court should leave *Priesman* and its progeny intact.

## IV. EVEN IF THE COURT CONCLUDES THAT *PRIESMAN* SHOULD BE OVERRULED OR LIMITED, THE DECISION SHOULD BE APPLIED ONLY PROSPECTIVELY AS THE FAMILY JOYRIDING EXCEPTION IS A LONG-STANDING INTERPRETATION OF THE ACT AND ONE UPON WHICH THE CITIZENS OF THIS STATE HAVE REASONABLY RELIED

In the event this Court concludes that family joyriding exception as set forth in *Priesman*, *Butterworth* and their progeny should be overruled, the decision should be limited to prospective application. Although the general rule is that this Court's decisions are given full retroactive effect, this Court adopts a more flexible approach if injustice would result from full retroactivity.[72] "For example, a holding that overrules settled precedent may properly be limited to prospective application.[73] In determining whether to depart from the general rule of retroactivity, this Court first asks the threshold question of whether the decision "clearly establishe[s] a new principle of law."[74] If so, the Court goes on to consider the following three

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[71] Although Spectrum Health and Mary Free Bed recognize that a decision denying leave to appeal technically has no precedential value itself, in practical effect, the decision leaves precedent intact. *See Rowland, supra* at 218 n.14 (asserting that, to properly calculate the frequency with which this Court overrules precedent, decisions denying leave to appeal should be included because "[e]ach case presumably relied on earlier precedent, and when this Court denies leave to appeal, it leaves precedent intact").

[72] *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455, 462; 795 NW2d 797 (2010); *Pohutski v City of Allen Park*, 465 Mich 675, 695-96; 641 NW2d 219 (2002).

[73] *Pohutski, supra* at 696.

[74] *Id.*

factors: (1) the purpose to be served by the new rule; (2) the extent of reliance on the old rule; and (3) the effect of retroactivity on the administration of justice.[75]

The first question then is whether a decision overruling the family joyriding exception would establish a new principal of law. Because such a decision would be inconsistent with how § 3113(a) has been interpreted and applied for the past two decades, it would. For example, in *Bezeau v Palace Sports & Entertainment, Inc*, this Court recently concluded that its decision in *Karaczewski v Farbman Stein & Co,*[76] which overruled a long-standing interpretation of the Workers' Compensation Act as inconsistent with the statute's plain language, established a new principal of law.[77] The Court explained that although *Karaczewksi* had "interpreted the statute consistently with its plain language, the Court's interpretation established a new rule of law because it affected how the statute would be applied to parties in workers' compensation cases in a way that was inconsistent with how the statute had been previously applied."[78] Similarly, in *Pohutski v City of Allen Park*, this Court overruled a long-standing interpretation of the governmental tort liability act as contrary to the clear and unambiguous language of the statute.[79] Again, the Court noted that although it was interpreting the statute consistently with its plain text, the decision, nonetheless, announced a new rule of law because it was contrary to the Court's previous interpretation of the statute.[80]

Indeed, it would seem obvious that a decision of this Court which interprets a statute in a manner contrary to how the statute has long-been interpreted announces a "new" rule

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[75] *Id.*
[76] 478 Mich 28; 732 NW2d 56 (2007).
[77] *Bezeau, supra* at 463.
[78] *Id.*
[79] *Pohutski, supra* at 695.
[80] *Id.* at 696; *see also Gusler, supra* at 396-97 (explaining that a Michigan Supreme Court decision which was contrary to previous interpretations of the Court of Appeals was "not unlike the announcement of a new rule of law").

of law. A published decision, like *Butterworth*, is binding on every court of this state, save this one. It is the law and will remain so unless and until this Court *changes* it. Moreover, as this Court has previously explained, the "resolution of the retrospective-prospective issue ultimately turns on considerations of fairness and public policy."[81] In making its determination, "the Court must take into account the *total situation* confronting it and seek a *just and realistic solution* of the problems occasioned by the change."[82] To treat a long-standing statutory interpretation that has been binding upon all of the lower courts of this state for nearly two decades as though it never existed is contrary to this overall goal. This Court, as it did in *Bezeau* and *Pohutski*, should take into account the entire situation confronting it. Because *Priesman's* interpretation of "unlawful taking" has been the law of this state for nearly 20 years and because just two years ago this Court declined to review this very issue, thereby leaving that precedent intact, a decision overruling the family joyriding exception establishes a new rule of law.

The next step, then, is to weigh the remaining factors in the retrospective-prospective analysis, the first of which is the purpose to be served by the new rule. The purpose of a decision overruling the family joyriding exception on the ground that it is not found in the plain language of the statute would be to interpret the statute consistently with the Legislature's apparent intent in drafting § 3113(a). Prospective application would further this purpose and remain consistent with the overall goal of fairness.[83]

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[81] *Riley v Northland Geriatric Center*, 431 Mich 632, 644; 433 NW2d 787 (1988);
[82] *Id.* at 645 (emphasis added); *see also Pohutski*, *supra* at 695 (citing the same language and explaining that, in ruling on retroactivity versus prospectivity, the Court had taken into account the entire situation confronting it).
[83] *See, e.g*, *Riley*, *supra* at 646 (finding that the purpose of the new rule, which was "to correct a serious error in the interpretation of a statute," "would best be furthered" by prospective application); *see also Pohutski*, *supra* at 697 (finding that prospective application would further the purpose of correcting an error in statutory interpretation)

The reliance interests in this case weigh heavily in favor of prospective application. Since 1992, the appellate courts of this state have construed the term "unlawful taking" as used in § 3113(a) not to include family members joyriding in family vehicles. Every court of this state, save this one, has been bound by that interpretation since *Butterworth* was decided. Spectrum Health and Mary Free Bed should not be punished for relying on this settled rule of no-fault law. At the time Spectrum Health and Mary Free Bed filed their Complaint in this case, *Roberts* had been decided, the Court of Appeals had been polled and declined to convene a special conflict panel, and this Court had denied leave to appeal this very issue. The precedent was set and the justices on this Court at that time left the family joyriding exception intact. Although there is always a risk that the decisions of the intermediate appellate courts of this state may be overruled by this higher authority, attorneys and their clients should not be expected to assume that they will. This is especially true where, as here, this Court had just had the opportunity to and declined to do so.

Of course, it is not only medical providers, like Spectrum Health and Mary Free Bed, who have relied on the family joyriding exception's status as a long-standing rule of no-fault law. Unless and until this Court took it up, insurance companies also knew that the lower courts of this state were bound by and would apply it. Surely they did not fail to take this fact into account while setting and collecting their premiums over the past 20 years. Thus, assuming this Court now decides to overrule the family joyriding exception, it is the medical providers (who have submitted their claims and defended them in Court based upon this settled rule of no-fault law) and people like the DeYoungs (who have paid the insurance premiums that undoubtedly reflect this known risk) who will suffer the consequences of the decision, not the

insurance companies. Under these circumstances, the reliance interests at issue weigh in favor prospective application.

As to the final factor in the analysis, it is hard to gauge in advance what effect the overruling of the family joyriding exception will have on the administration of justice. Yet, because it has been the law of this state for 20 years, and because innumerable insurance decisions have been made and premiums set and collected based upon its existence, there will most assuredly be some impact on the administration of justice. Prospective application will aid in keeping that effect minimal.

If this Court determines that the family joyriding exception, which has been the law of this state for nearly two decades, should be overruled, Spectrum Health and Mary Free Bed ask that the decision be applied prospectively. The reliance interests in this case demand that result.

## CONCLUSION

For all of these reasons, this Court should decline to overrule the family joyriding exception and affirm the Court of Appeals decision. In the event this Court disagrees and overrules or otherwise limits the family joyriding exception, it should do so prospectively.

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